

GREECE

Parallel imports ruling raises questions

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In a recent case relating to a product (a medical device) that treats coughs, some interesting issues were raised regarding parallel imports, repackaging and unfair competition.

The Greek distributor of this product brought a preliminary injunction (PI) action against a parallel importer of the same product that was imported from another EU member state. The defendant had attached its name and a summary of useful information to a label on the package of the product and, additionally, it had inserted a leaflet within the package containing the product's critical information in the Greek language. The action was based on unfair competition rules rather than on trade mark law.

The PI judge ruled that there is no unfair competition on the part of the defendant as the information, either attached or inserted, was necessary for the product's launch on to the Greek market. However, the PI judge did not further consider whether the defendant's above-mentioned actions constitute "repackaging" as defined by the EU case law regarding exhaustion of trade mark rights.

According to the Greek unfair competition rules, any purposeful competitive act that runs contrary to public morals is prohibited. In that sense, if the defendant's above-mentioned acts were to be found to be an impermissible "repackaging", this might well mean that they constitute an act running contrary to public morals, even if trade mark protection is not directly invoked.

Notably, the PI judge dismissed the trade mark owner's intervention filed in favour of the claimant by ruling that the trade mark owner should have chosen a procedural remedy under which an independent protection against the defendant would have been sought.

It seems that this judgment is not free from difficulties, which are anyway frequently present in parallel imports cases. It is certain though that a coughing out ruling does not help legal clarity.